

Assembly Bill No. 815

CHAPTER 108

An act to amend Section 8670.40 of the Government Code, and to amend Section 46101 of, to add Section 46008 to, and to repeal Section 46018 of, the Revenue and Taxation Code, relating to oil spills.

[Approved by Governor July 15, 2015. Filed with
Secretary of State July 15, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 815, Ridley-Thomas. Oil spill prevention and response fees: collection.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government.

The act imposes an oil spill prevention and administration fee in an amount determined by the administrator to be sufficient to implement oil spill prevention activities, but not to exceed \$0.065 per barrel of crude oil or petroleum products, and to be remitted to the State Board of Equalization. The act requires the oil spill prevention and administration fee to be imposed upon a person owning crude oil or petroleum products at the time that the crude oil or petroleum products are received at a marine terminal or refinery by specified modes of delivery from within or outside the state, as specified. The act prohibits the fee from being collected by a marine terminal operator or refinery operator or imposed on the owner of crude oil or petroleum products if the fee has been previously collected or paid on the crude oil or petroleum products at another marine terminal or refinery and, in that case, requires a marine terminal operator, refinery operator, or owner of crude oil or petroleum products to demonstrate that the fee has already been paid.

This bill instead would authorize a marine terminal operator or a refinery operator receiving petroleum products derived from crude oil refined in the state to presume the fee has been previously collected. The bill would also no longer require the owner of the crude oil or petroleum products to remit the fee to the board. The bill would make conforming changes.

This bill would state the intent of the Legislature that the board collect the oil spill prevention and administration fee only upon first delivery to a refinery or marine terminal and not upon the subsequent movement of that same crude oil or petroleum products following that first delivery.

(2) Existing law requires every person who operates a refinery in this state, a marine terminal in waters of the state, or a pipeline to transport crude

oil or petroleum products out of the state to register with the board. Existing law defines, for the purposes of the board's administration of those provisions, certain terms, including, among others, oil.

This bill instead would require every person who operates a refinery in this state, a marine terminal in waters of the state, or a pipeline to transport crude oil out of the state or petroleum products into the state to register with the board for the purposes of the oil spill prevention and administration fee and the uniform oil spill response fee, as applicable. The bill would delete the definition of oil, and would define barrel to mean 42 gallons of crude oil or petroleum products for these purposes.

The people of the State of California do enact as follows:

SECTION 1. Section 8670.40 of the Government Code is amended to read:

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to pay the reasonable regulatory costs to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment shall not exceed six and one-half cents (\$0.065) per barrel of crude oil or petroleum products. The oil spill prevention and administration fee shall be based on each barrel of crude oil or petroleum products, as described in subdivision (b).

(b) (1) The oil spill prevention and administration fee shall be imposed upon a person owning crude oil at the time that the crude oil is received at a marine terminal, by any mode of delivery that passed over, across, under, or through waters of the state, from within or outside the state, and upon a person who owns petroleum products at the time that those petroleum products are received at a marine terminal, by any mode of delivery that passed over, across, under, or through waters of the state, from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products for each barrel of crude oil or petroleum products received.

(2) The oil spill prevention and administration fee shall be imposed upon a person owning crude oil or petroleum products at the time that the crude oil or petroleum products are received at a refinery within the state by any mode of delivery that passed over, across, under, or through waters of the state, whether from within or outside the state. The refinery shall collect the fee from the owner of the crude oil or petroleum products for each barrel received.

(3) (A) There is a rebuttable presumption that crude oil or petroleum products received at a marine terminal or a refinery have passed over, across, under, or through waters of the state. This presumption may be overcome by a marine terminal operator, refinery operator, or owner of the crude oil or petroleum products by showing that the crude oil or petroleum products did not pass over, across, under, or through waters of the state. Evidence to

rebut the presumption may include, but shall not be limited to, documentation, including shipping documents, bills of lading, highway maps, rail maps, transportation maps, related transportation receipts, or another medium, that shows the crude oil or petroleum products did not pass over, across, under, or through waters of the state.

(B) Notwithstanding the petition for redetermination and claim for refund provisions of the Oil Spill Response, Prevention, and Administration Fees Law (Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code), the State Board of Equalization shall not do either of the following:

(i) Accept or consider a petition for redetermination of fees determined pursuant to this section if the petition is founded upon the grounds that the crude oil or petroleum products did or did not pass over, across, under, or through waters of the state.

(ii) Accept or consider a claim for a refund of fees paid pursuant to this section if the claim is founded upon the grounds that the crude oil or petroleum products did or did not pass over, across, under, or through waters of the state.

(C) The State Board of Equalization shall forward to the administrator an appeal of a redetermination or a claim for a refund of fees that is based on the grounds that the crude oil or petroleum products did or did not pass over, across, under, or through waters of the state.

(4) The fees shall be remitted to the State Board of Equalization by the refinery operator or the marine terminal operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a refinery or marine terminal during the preceding month. A fee shall not be imposed pursuant to this section with respect to crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has already been collected by a refinery or marine terminal operator registered under this chapter or paid to the State Board of Equalization with respect to the crude oil or petroleum product.

(5) The oil spill prevention and administration fee shall not be collected by a marine terminal operator or refinery operator or imposed on the owner of crude oil or petroleum products if the fee has been previously collected or paid on the crude oil or petroleum products at another marine terminal or refinery. A marine terminal operator or a refinery operator receiving petroleum products derived from crude oil refined in the state may presume the fee has been previously collected.

(6) An owner of crude oil or petroleum products is liable for the fee until it has been paid to the State Board of Equalization, except that payment to a refinery operator or marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(7) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest and inflation, are equivalent

to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies. The administrator shall notify the State Board of Equalization of the adjusted fee rate, which shall be rounded to no more than four decimal places, to be effective the first day of the month beginning not less than 30 days from the date of the notification.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The State Board of Equalization shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(5) To reimburse the State Board of Equalization for its reasonable costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(6) To fund the Oiled Wildlife Care Network pursuant to Section 8670.40.5.

(f) The moneys deposited in the fund shall not be used for responding to a spill.

(g) The moneys deposited in the fund shall not be used to provide a loan to any other fund.

(h) The amendments to this section enacted in Section 37 of Chapter 35 of the Statutes of 2014 shall become operative September 18, 2014.

SEC. 2. Section 46008 is added to the Revenue and Taxation Code, to read:

46008. “Barrel” means 42 gallons of crude oil or petroleum products.

SEC. 3. Section 46018 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 46101 of the Revenue and Taxation Code is amended to read:

46101. (a) Every person who operates a refinery in this state, a marine terminal in waters of the state, or operates a pipeline to transport crude oil out of the state or petroleum products into the state shall register with the board for the purposes of Section 8670.48 of the Government Code.

(b) Every person who operates a refinery in this state or a marine terminal in waters of the state shall register with the board for the purposes of Section 8670.40 of the Government Code.

SEC. 5. It is the intent of the Legislature that the State Board of Equalization collect the oil spill prevention and administration fee imposed on crude oil or petroleum products pursuant to Section 8670.40 of the Government Code only upon first delivery to a refinery or marine terminal, as described in subdivision (b) of Section 8670.40 of the Government Code, and not upon subsequent movement of that same crude oil or petroleum products derived after that first delivery.